

PRAB: Policy Note II

**When the ends seems to 'justify' the means:
Pushing those unwanted out instead of using
existing readmission agreements - the way
forward?**



**Protecting Rights
at Borders**

The PRAB initiative gathers partner organizations operating across a range of different countries: **Italy** (Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Diaconia Valdese (DV) and Danish Refugee Council (DRC) Italia); **Hungary** (Hungarian Helsinki Committee); **Bosnia and Herzegovina** (DRC BiH); **Serbia** (Humanitarian Center for Integration and Tolerance (HCIT)); **North Macedonia** (Macedonian Young Lawyers Association (MYLA)); **Greece** (Greek Council for Refugees (GCR) and DRC Greece); and **Brussels** (DRC Brussels).



This project has been supported by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF). The sole responsibility for the project lies with the organiser(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

When the ends seems to 'justify' the means: Pushing those unwanted out instead of using existing readmission agreements – the way forward?

States have the right to protect their borders, however this has to happen in compliance with their obligations under international law, including human rights law. The fact that many states have official readmission agreements makes it quite striking that in reality, they are scarcely implemented, with states opting rather for pushbacks when people are pushed into their territories. The use of pushbacks, as a state-implemented deterrence measure, is, in addition, in clear violation of EU and international law. It further exemplifies how respect for human rights is becoming a 'race to the bottom' among states, even though they are under both a positive obligation to respect people's rights and a negative obligation to refrain from violating them.

This policy note aims to provide an overview of the difference between a pushback and a readmission made on the basis of a readmission agreement; it outlines how international agreements are circumvented on the basis of concrete examples and some testimonies, as well as the consequences thereof; it focuses on the incoherent and rather *ad hoc* use of readmission agreements in (chain) pushbacks and it concludes by stating that while formal readmissions are preferred over pushbacks, states must ensure that procedural and human rights safeguards are respected, implemented and enforced even during formal procedures. Last but not least, it shares an extensive overview of all existing (often sleepy) readmission agreements in Italy, Greece, Serbia, Bosnia-and-Herzegovina, North Macedonia, and Hungary.

Two sides of the same coin?

Readmission agreements are bilateral or multilateral formal agreements that allow for the re-appointment of countries' own nationals and nationals of other countries – "foreigners" – who are in an irregular situation on the territory of another state. Most countries within the EU have readmission agreements with many third countries, but others have also concluded bilateral readmission agreements between EU Member States (e.g. Italy-France or Slovenia-Croatia). Many readmission agreements provide for both formal and informal readmissions (e.g. Readmission agreement between Italy and Slovenia). A list of the readmission agreements applicable to countries covered under the PRAB initiative can be found in the annex below.

Pushbacks are acts of expulsion without legal justification and procedure, usually employed by state authorities, more specifically law enforcement agents, to push foreigners from the state's territory to the territory of another state without having regard to their individual circumstances and their right to seek asylum. Pushbacks are unlawful according to the domestic legislation of most European states and could violate also the prohibition of collective expulsions included in Protocol 4 of the European Convention on Human Rights. Further note that there is a difference between administrative pushbacks where the authorities conduct some form of procedure (e.g. use of form for refusal of entry at the border) and summary pushbacks, where no formal procedure occurs, and thus no records are made by the authorities.

Circumventing existing international agreements?

Within the countries covered under the PRAB initiative, readmission agreements exist between: Bosnia-and-Herzegovina and Croatia; Slovenia and Croatia; Serbia-North Macedonia; Serbia and Croatia; Hungary-Serbia, Slovenia, and Croatia; as well as Italy-Slovenia, Italy-Greece and Italy-France (see an elaborated list in the annex below). However, the reality is that in a large number of cases these

readmission agreements are rarely used and that pushbacks are happening across multiple borders without authorities reaching out to their peers on the other side.

The readmission agreement between **Bosnia and Croatia** is rarely used. The reasons for the rather 'random' use of the readmission agreement remains unclear and is being monitored on the ground. Contrary to a complete non-use of the formal agreement prior to September 2021, only 3 cases were recorded in September and October, and 2 in November 2021. This number remains low in comparison to 200 pushback cases recorded, which included 2208 persons of concern (PoCs). Multiple people were similarly involved in the 3 cases of formal readmission in September and October. More precisely, the first case included 18 single males (9 from Bangladesh, 8 from Pakistan and 1 from Afghanistan), the second included 9 people (two families from Afghanistan, existing of 2 males, 2 females, 4 boys and 1 girl) and the third case was a family of 5 people from Afghanistan (including a man, woman and 3 children). In the reported incidents, the people affected received a certificate for confiscated funds, a certificate of collection of the costs of forced removal and a decision on expulsion. These documents were in Croatian, and no translation or legal aid was provided during the procedure or their stay in the police stations or reception centres, sometimes extending to 14 days. In November, 2 more cases were reported in which PoCs were directly transferred from Croatian to Bosnian police. Their testimonies can be found below:

Testimony 1: Around November 9, a family of four (HoH, wife, 5 year old son, 2 year old daughter) started their journey from TRC Borici: "We bought bus tickets for Banja Luka, and from Banja Luka to Bosanski Brod, where we arrived at 4 pm. From Bosanski Brod we walked 15-20 kilometers until we reached the river around midnight. We had the boat with us, so we used it to cross the river. We spent that night in one forest near Klakar. It was not a big forest, there were a few trees, and a lot of cows in that place. When we woke up, we walked through the trees and bushes, our clothes were wet from crossing the river, and reached Klakar around 10 am. During the walk we saw just one man in a car, and stopped him and asked could he call the police. The man walked with us to one place, it was a big hall, something similar to the municipality. A few persons were working there. He said that he can't help us, but employees who are working there can. Employees from that institution told us to sit and wait, that they will call the police. 20 minutes after that two police officers came. Police officers asked us questions about the journey, how we come, which was our route, did anyone help us, and do we have a phone. I showed the phone and police officers took it away from me. Police officers called someone and the car came to take us to the police station. At the police station, police officers took our belongings and searched them - wife was searched by a female police officer. Police officers questioned us and put us in one room, and after 2 hours came again to take us. They changed the way of communication, the first time they were respecting us, but this time they were rude towards us. Police gave us some papers to sign, for every person three papers. One of the papers was written in Farsi, but they didn't let us read it. When they returned to the room, we asked to take the dry clothes to change the ones we were wearing which were wet, but the officers didn't let us.

We hadn't eaten since the night before, we were hungry, our food was in our belongings and police officers didn't let us take it. Around 10 pm police took us to one room and gave us one box of food, there were 2 bread, cheese, and cookies. The bread was moldy. We checked the dates on the products and saw that the deadline was expired, but we were hungry, and we ate the food. In that room, they had a toilet and a man took a shower while the children were sleeping, police officers gave them three sandwiches. We asked police to turn off the lights and asked to take medications we had for our daughter, but police didn't let us. Tomorrow around 12 am police officers came and told us to get ready that they will do tests for Covid-19 in an ambulance. When the results came, we got ready, and police officers told us that the car will come to deport us. We were deported in the area of Bosanski Brod, and Police officers from Croatia handed us over to Bosnian police officers. Bosnian police officers took us to Dobož. We spend time in one building, it wasn't a police station, but it was near the police station. I wanted to ask them why are they there, but they told me if I speaks I will be deported to Afghanistan. Police officers called the IOM from Sarajevo, and returned to us the phone Croatian police took from us. We signed some papers, which police officers gave to IOM. I thought police officers

thought that I was a smuggler. I said to them that I want to go back to Bihac. At the entrance of the Camp I said to them that my AISA (Attestation on Intent to Seek Asylum) is damaged and I want a new one. The man who was working there asked me what I was doing in Dobož. I told the story about deportation and asked him what is the problem. The man told me that something was written next to my name in the system and made me a new AISA. We spent two nights in Sarajevo and came back to Camp Borici on November 15.

Testimony 2: We [2 adult men from Afghanistan] went to Bijeljina on Tuesday 23 November where we meet with our contact. He informed us that the car will be available tomorrow early morning. The car arrived and we were told to hide in the space behind the back seat. There were two of us, me and my friend. We drove for about 3 hours when we were told that we will come to the border soon. I don't know how long we waited but we felt that something is wrong. The car was climbing onto something high and we heard lots of voices. Soon the door was opened and we were found. The police officer (dark blue pants and light blue shirt, police insignia on right, and police badge on left), told us to come out. There were 4 more police officers in the same uniforms and they asked us who we are. We told them we are from Afghanistan and we don't have any papers. They told us to stand near the car and they searched us and our bags. They didn't take anything from us. We were told to stand near the border container and wait. After approximately 1 hour we were given papers to sign. They told us to sign and go back to Bosnia. We asked for a translator and we wanted to stay but they told us no. We signed the papers and they took us to the police car. After a 5-minute drive, we were told to go out and wait near the police container. There we saw 3 Bosnian police (dark blue uniforms) and they said to sit. We didn't see where they went but they came back after 15 minutes and told us to sit in the car. We showed them ID cards from TRC Blazuj and asked them to go there. We drove for about 5 kilometers and we stopped. Police officer opened the door and told us to go out. Then he told us to go to Sarajevo. We went to Tuzla before coming back to TRC Blazuj.

These cases indicate that even when people are returned on the basis of a formal readmission agreement, which seems to be used rather *ad hoc*, their rights are violated. Those rights include that there is not an individual assessment of their need for international protection and that the possible violation of non-refoulement upon their readmission is not assessed, as well as their right to be informed about ongoing procedures in a language that they understand and the availability of legal aid and appeal remedies. The motivation for the destruction of property can therefore be considered twofold: firstly, for ensuring evidence is destroyed, secondly, for lucrative purposes.

The readmission agreement between **Slovenia and Croatia** is applied as standard practice. People undergoing this formal procedure are directly transferred to the border or kept for approximately 3 days in police stations. During their stay in the stations, people are questioned about their personal information and their route to enter Slovenia. In some cases, testimonies mention translators, but never (free) legal aid.

Since January 2021, informal readmissions from **Italy to Slovenia** on the basis of the bilateral agreement have been suspended but bilateral police controls have been intensified and people on the move are apprehended shortly before the Italian border also by bilateral patrols. Despite the ruling of the European Court of Human Rights in the [Sharifi](#) case, Italy continues to use the readmission agreement with Greece to readmit asylum seekers, minors and vulnerable people to Greece.

When **Hungary** completed the construction of a border fence with **Serbia** in September 2015, the Serbian government announced it will no longer take back third country nationals under the existing readmission agreement, unless they have a legal right to stay in Serbia. This practice remained in place at least until the summer of 2021, when Serbian border guards told the Hungarian Helsinki Committee (HHC), one of the PRAB members, that official readmissions are restarting. However, they have thus far only occurred at random and only in very few cases, while pushbacks occur daily (or en masse). It is in this case important to note that Hungary »legalised« pushbacks in 2016, allowing the Hungarian

Police to »return« third-country nationals to the Serbian side of the border fence without any kind of official procedure, including under the readmission agreement.

The **Greek-Turkish readmission** agreement has been used more extensively since the EU-Turkey Statement. Since the release of the statement in 2016 , up until March 2020 when readmission to Turkey was suspended, 2140 people have been readmitted into Turkey. Those whose asylum claim was considered inadmissible on the basis of the safe third country concept were from different nationalities, including: 751 Pakistani nationals (35%); 404 Syrians (19%), 205 Algerians (10%), and 150 Afghans (7%). Their applications for international protection were consequently not examined on the merits.

Pushed across multiple borders: sometimes based on and sometimes without any legal framework

66 testimonies, collected since March 2021 in Bosnia, reveal that 581 PoCs have experienced chain pushbacks. Since the partners of the PRAB initiative jointly started to collect reports of pushback cases, 41 cases of chain pushbacks, including a total of 353 people, were recorded. For 10 people, the chain pushback started in Italy, while 343 people were pushed back from Slovenia to Croatia and then Bosnia. In all the collected testimonies, people were transferred from the Slovenian to the Croatian police directly; in some testimonies, with the transfers taking place at official border crossings. However, in only 3 cases, including 19 people, readmission documents were directly issued to them. In all other cases, no such documents were signed. As stated above, in the vast majority of cases the final border crossing (between Croatia and Bosnia) also occurred without the use of any formal readmission agreement. The combination of using formal readmission agreements for one border and illegal pushbacks for others, as part of chain pushbacks, is also happening at other borders. Namely between Austria and Hungary the formal agreement is used, while Hungarian border guards then engage in pushbacks to push people back to Serbia. The HHC is currently representing a client at the European Court of Human Rights, who experienced the combination of these practices.¹ The client, a minor at the time of the pushbacks, was registered in Austria and for unknown reasons, was handed over to the Hungarian police at the Austrian-Hungarian railway border crossing at Hegyeshalom. After being briefly detained he was pushed to Serbia, a country where he had never been before.

Further, in some cases (no exact data available), the Hungarian Police seem to officially readmit people to Romania. According to relevant news items, the Romanian authorities then start a misdemeanour procedure against the individuals. The HHC met two Syrian nationals in July 2021, in Subotica, who claimed to have been returned this way to Romania and were then pushed back to Serbia by the Romanian authorities.

Safe with the neighbors?

Both readmissions on the basis of readmission agreements and pushbacks are being used to send people to other countries without effectively assessing whether their rights (under international law)² will be upheld when being sent cross border, or without conducting any medical examination. Both

¹ More on his case (still pending at the ECtHR) in English: <https://vimeo.com/431039382>

² Domestic legislation in Hungary has – contrary to EU and international law – made the assessment of principle of non-refoulement or international protection inadmissible. First, Serbia is designated as a safe third country through a government decree and until there was a somewhat functioning asylum system, the Hungarian asylum authority did use this as a ground to reject applications and regard this as proof of non-refoulement in case of return. Second, more importantly, under the currently applicable rules, no person (save for a very limited number of exceptions) can seek asylum in Hungary, so even if the readmission agreement would be triggered, the person would be excluded from access to the asylum procedure.

practices have been criticized by human rights actors and scholars. States have to accept their responsibility with regards to assessing individuals' requests for international protection, and states should refrain from the easy solution of assuming protection elsewhere - without effective safeguards in place – as this can lead to protection nowhere. The added value of correctly implemented readmission agreements, is nevertheless that States are informed that a person will be readmitted to its territory, and they can foresee the required assistance, including immediate medical needs and so on. Therefore, it can be concluded that States must in all cases comply with their obligations under existing legal frameworks and opt for readmission instead of engaging in the illegal practice of pushbacks, as well as to hold an individual assessment under EU and international human rights law to ensure that there is no violation of non-refoulement.

Annex: Overview of relevant readmission agreements

Bosnia-and-Herzegovina

- Agreement between the [European Community and Bosnia and Herzegovina on the readmission of persons residing without authorization](#)

Greece

- Belarus ([Law 2421/1996](#))
- Bosnia-Herzegovina ([Law 3547/2007](#), [Law 3725/2008](#), and [Law 3856/2010](#))
- Bulgaria ([Law 2406/1996](#), [Law 3779/2009](#), and [Law 3780/2009](#))
- Croatia ([Law 2350/1995](#))
- France ([Law 2917/2001](#))
- Hungary ([Law 2222/1994](#) and [Law 3321/2005](#))
- Italy ([Law 2857/2000](#))
- Latvia ([Law 2861/2000](#))
- Lithuania ([Law 2426/1996](#) and [Law 2911/2001](#))
- Poland ([Law 2384/1996](#) and [Law 2580/1998](#))
- Romania ([Law 2138/1993](#) and [Law 2301/1995](#))
- Serbia ([Law 3909/2011](#))
- Slovenia ([Law 2353/1995](#))
- Turkey, ([Law 2926/2001](#) and [Law 3030/2002](#))
 - *Note that the EU- Turkey Statement is not a formal readmission agreement and that the legal basis for the readmission of third country nationals to Turkey within the framework of the EU – Turkey Statement remains the Greek-Turkish 2001 Protocol. More information is available in this regard on [EU Commission, EU-Turkey Statement: Questions and Answers, 19 March 2016](#).*
- Ukraine ([Law 2427/1996](#) and [Law 3158/2003](#))

Hungary

- (EU) Serbia: [2007/819/EC: Council Decision of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation](#)
- Romania: [Act LX of 2002](#)
- Austria: [Act V of 1996](#)

- (EU) Ukraine: [Agreement between the European Community and Ukraine on the readmission of persons](#)
- Slovenia: [Act LXXXI of 1999](#)
- Croatia: [Act XXXV of 2003](#)
- Slovakia: [Act VII of 2004](#)

Italy

The readmission agreements that Italy has signed, and that are relevant for this report, are listed below. The information about the existence of the readmission agreements is publicly accessible, however, the readmission agreements themselves are not always and access can only be obtained via a 'civil access' request (FOA). The reason why they are not publicly available is likely linked to the nature of the agreements: some being police cooperation agreements linked to readmissions, others MoUs, administrative agreements, or simple exchanges of letters. Consequently, the links cannot be provided in the list below.

- Agreement between Italy and France on the readmission of persons in an irregular situation, with Annex and three Annexes (Chambery 3.10.1997), in force since 1 December 1999
- Agreement between Italy and Greece on the readmission of persons in an irregular situation (Rome, 30.4.1999), enters into force on exchange of notifications
- Agreement between Italy and Slovenia on the readmission of persons at the border (Rome, 3 September 1996), in force since 1 September 1997
- Agreement between Italy and Croatia on the readmission of persons in an irregular situation (Rome, 27.6.1997), enters into force on the exchange of notifications

North Macedonia

- 2007/817/EC: Council Decision of 8 November 2007 on the conclusion of the Agreement between the [European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation](#)
- [Bosnia and Herzegovina](#)
- [Croatia](#)
- [Hungary](#)
- [Italy](#)
- [Poland](#)
- [Serbia](#)
- [Slovenia](#)

Serbia

- Official Gazette of RS - International Agreements, no. 103/2007: the law on ratification of the Agreement between the [Republic of Serbia and the European Union on readmission of persons residing illegally](#)

